

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

Gregory S. Corbett

Plaintiff

vs.

CITIBANK (South Dakota), N.A.;
LUSTIG, GLASER & WILSON, P.C.

Defendant(s)

Case No.: 10-cv-10219

Trial By Jury Demanded

FILED
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U.S. DISTRICT COURT
DISTRICT OF MASS.

Motion to Quash Defendants Motion to Dismiss

Comes now the Plaintiff Gregory S. Corbett, in response to the Defendants Motion to Dismiss, The Defendant CITIBANK (South Dakota), N.A. hereinafter "CITIBANK", has sited much case law in their response. Defendant claims there is no private right of action under 15 U.S.C. § 1681s-2(a), which governs the duty of furnishers. The Plaintiff will clarify the law from the FCRA

§ 602. Congressional findings and statement of purpose [15 U.S.C. § 1681]

(a) *Accuracy and fairness of credit reporting.* The Congress makes the following findings:
(1) The banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system.

§ 603. Definitions; rules of construction [15 U.S.C. § 1681a]

(a) Definitions and rules of construction set forth in this section are applicable for the purposes of this title.

(b) The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(c) The term "consumer" means an individual.

617. Civil liability for negligent noncompliance [15 U.S.C. § 1681o]

(a) *In general.* Any person who is negligent in failing to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to the sum of

(1) any actual damages sustained by the consumer as a result of the failure; and

(2) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(b) *Attorney's fees.* On a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

§ 623. Responsibilities of furnishers of information to consumer reporting agencies

[15 U.S.C. § 1681s-2]

(a) Duty of Furnishers of Information to Provide Accurate Information

(1) Prohibition

(A) *Reporting information with actual knowledge of errors.* A person shall not furnish any information relating to a consumer to any consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate.

(B) *Reporting information after notice and confirmation of errors.* A person shall not furnish information relating to a consumer to any consumer reporting agency if

(i) the person has been notified by the consumer, at the address specified by the person for such notices, that specific information is inaccurate; and

(ii) the information is, in fact, inaccurate.

(C) *No address requirement.* A person who clearly and conspicuously specifies to the consumer an address for notices referred to in subparagraph (B) shall not be subject to subparagraph (A); however, nothing in subparagraph (B) shall require a person to specify such an address.

(D) *Definition.* For purposes of subparagraph (A), the term "reasonable cause to believe that the information is inaccurate" means having specific knowledge, other than solely allegations by the consumer, that would cause a reasonable person to have substantial doubts about the accuracy of the information.

(2) *Duty to correct and update information.* A person who

(A) regularly and in the ordinary course of business furnishes information to one or more consumer reporting agencies about the person's transactions or experiences with any consumer; and

(B) has furnished to a consumer reporting agency information that the person determines is not complete or accurate, shall promptly notify the consumer reporting agency of that determination and provide to the agency any corrections to that information, or any additional information, that is necessary to make the information provided by the person to the agency complete and accurate, and shall not thereafter furnish to the agency any of the information that remains not complete or accurate.

(3) *Duty to provide notice of dispute.* If the completeness or accuracy of any information furnished by any person to any consumer reporting agency is disputed to such person by a consumer, the person may not furnish the information to any consumer reporting agency without notice that such information is disputed by the consumer.

Case Law to Support private right of action under 15 U.S.C. § 1681s-2(a),

Dornhecker v. Ameritech Corp., 99 F. Supp. 2d 918 (N.D. Ill. 2000).

A U.S. district court held that the Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681 et seq., permits consumers to bring private causes of action against furnishers of information to credit reporting agencies who fail to properly investigate disputed credit information.

Here, a telephone services provider opened phone service accounts on behalf of third persons who fraudulently used the names of other individuals. The provider subsequently enlisted the services of collection agencies to satisfy the debts on the accounts. After being made aware of the debts, the individuals whose names had been used notified the credit reporting agencies of the fraud. After the individuals, collection agencies, and credit reporting agencies notified the provider of the dispute, the provider reportedly failed to investigate. The individuals sued the provider, alleging, among other claims, that defendant violated 1681s-2(b)(1) of the FCRA by failing to properly investigate the disputed credit information. Defendant moved to dismiss, arguing that plaintiffs lacked standing because the FCRA does not create a private right of action for consumers.

Denying the motion, **the court agreed with the U.S. Supreme Court's** analysis-set forth in Cort v. Ash, 95 S. Ct. 2080 (1975) for determining whether an implied private right of action exists under a statute. The four factors are: whether (1) the plaintiff is a member of a class for whose benefit the statute was enacted; (2) the legislative history indicates congressional intent, explicit or implicit, either to create or deny such a remedy; (3) implying a private remedy would frustrate the underlying purposes of the legislative scheme; and (4) the cause of action is one traditionally relegated to state law.

May it please the Court: the Plaintiff has disputed with the Creditor CITIBANK (South Dakota), N.A. and The Credit Reporting Agencies in the same time period and can produced Certified Mailings of the Disputes as evidence in this case.

FCRA PROVIDES PRIVATE CAUSE OF ACTION AGAINST FURNISHER OF INFORMATION

Gordon v. Greenpoint Credit, 266 F.Supp.2d 1007 (S.D.Iowa2003).

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
RICHARD L. SHEFFER, :
Plaintiff, : CIVIL ACTION**

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v. :

:

**EXPERIAN INFORMATION :
SOLUTIONS, INC., et al., : No. 02-7407**

Defendants. :
MEMORANDUM AND ORDER
SCHILLER, J. February, 2003

In its motion, Sears contends that Plaintiff's claim under the FCRA should be dismissed because consumers have no private right of action against a credit furnisher under 15 U.S.C. §1681s-2(b).

In the alternative, Sears argues that Mr. Sheffer's allegations are legally insufficient because Plaintiff has failed to allege that a credit reporting agency has sent a dispute verification form to Sears. Sears also moves for the dismissal of Mr. Sheffer's defamation claim, arguing that the claim is preempted by the FCRA.

With respect to the issue of whether § 1681s-2(b) creates a cause of action for a consumer against a furnisher of credit information, Sears correctly notes that courts have reached different conclusions. However, a clear majority of courts that have addressed this issue has "effectively recognized Congress' obvious intent [to] create a private cause of action through § 1681s-2."

Vazquez-Garcia v. Trans Union De P.R., Inc., 222 F. Supp. 2d 150, 155 (D.P.R. 2002); *see also Nelson v. Chase Manhattan Mortg. Corp.*, 282 F.3d 1057, 1058 (9th Cir. 2002) (describing purpose of § 1681s-2(b) as "provid[ing] some private remedy to injured consumers"). The reasoning in support of the majority view has been aptly summarized:

The civil liability sections, 15 U.S.C. § 1681n and 1681o, explicitly provide a private right of action for consumers wishing to enforce any provision of the Fair Credit Reporting Act against "any person" who either "willfully fails to comply" or is "negligent in failing to comply." Absent any explicit limitation, the plain language of 15 U.S.C. §§ 1681n, 1681o, 1681s-2(b) and (c) provide a private right of action for a consumer against furnishers of information who have willfully or negligently failed to perform their duties upon notice of a dispute. Furthermore, the negative inference of explicitly precluding a consumer's right of action for violations of §1681s-

2(a) is that they are preserved in § 1681s-2(b). Accordingly, the plain language of the Fair Credit Reporting Act compels the conclusion that there is a private right of action for consumers to enforce the investigation and reporting duties imposed on furnishers of information.

Defendant CITIBANK (SOUTH DAKOTA), N.A. states that the Plaintiff Fails to State a Claim upon which relief can be granted:

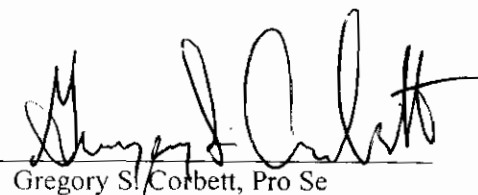
In considering a motion to dismiss for failure to state a claim upon which relief can be granted, courts must accept as true all of the factual allegations pleaded in the complaint and draw all reasonable inferences in favor of the non-moving party. *See Bd. of Trs. of Bricklayers & Allied Craftsmen Local 6 of N.J. Welfare Fund v. Wettlin Assocs., Inc.*, 237 F.3d 270, 272 (3d Cir. 2001). Furthermore, a motion to dismiss will only be granted if it is clear that relief cannot be granted to the plaintiff under any set of facts that could be proven consistent with the complaint's allegations. *See Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)).

The Plaintiff moves this honorable court to Quash Motion to Dismiss and set these proceedings to Rule 26f.

The plaintiff will prepare Parties Planning Meeting and submit to the Court within 45 days upon order to 26f.

Respectfully submitted this 12 day of March, 2010.

By: _____



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